

Additionally, the panel noted that the SLA's policies and procedures are silent regarding holding a new election and also regarding a tie occurring during a run-off election. Therefore, the panel found that the language of the policies and procedures of the Business Enterprise Program regarding elections was clear in that once the two highest vote getters were determined, those two vote getters would continue with a run-off election until one of the vote getters ultimately won the election.

On September 26, 1991, a new election was held. The SLA petitioned the panel to declare the issue moot in light of the new election. The complainant requested that the panel unseat the person elected on October 4, 1989, as well as the person elected on September 26.

The panel ruled that the election process held by the SLA on October 4, 1989 was a violation of the policies and procedures of the Business Enterprise Program and, further, that Karla Todd won the run-off election that began on September 20, 1989. However, since a new and undisputed election was held on September 26, 1991, the panel concluded it was without authority to upset that election, and, therefore, the issue as to the appropriateness of the election held on October 4, 1989 was moot and no remedy could be fashioned.

Panel member Harris dissented, indicating that the rules of the Business Enterprise Program were silent regarding the situation of a run-off election, and, therefore, the SLA did not violate its own policy.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: January 30, 1995.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 1494-088 Oklahoma]

#### Grand River Dam Authority; Availability of Environmental Assessment

January 30, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory

Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed the application for non-project use of project lands for the Pensacola Hydroelectric Project. The application proposes to excavate an area approximately 174 feet wide, 500 feet long, and 10 feet deep and to construct a breakwater 10 feet wide (to the approximate elevation of 746 feet mean sea level) on Grand Lake O' The Cherokees, in Delaware County, Oklahoma. The staff prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the non-project use of project lands would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

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[Project No. 2114-032 Washington]

#### Public Utility District No. 2 of Grant County; Availability of Environmental Assessment

January 30, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing (OHL) reviewed the proposal for constructing a prototype fish surface collector at the Priest Rapids Project in Grant County, Washington. The Commission prepared an environmental assessment (EA) for the proposed action. In the EA, the Commission concludes that approval of construction of the proposed prototype fish surface collector will not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

**Lois D. Cashell,**

*Secretary.*

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[Docket No. GP94-19-000]

#### Oklahoma Corporation Commission Tight Formation Area Determination FERC No. JD94-01286T (Oklahoma- 57); Preliminary Finding

January 30, 1995.

On November 26, 1993, the Oklahoma Corporation Commission (Oklahoma) determined that the Fanshawe Formation, underlying parts of Latimer County, Oklahoma, qualifies as a tight formation under Section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA). ARCO Oil and Gas Company (ARCO) is the applicant before Oklahoma.

By letter dated January 10, 1994, staff tolled the Commission's 45-day review period and requested additional support for Oklahoma's conclusion that the Fanshawe Formation meets the Commission's tight formation guidelines in § 271.703(c)(2) of the Commission's regulations.<sup>1</sup> Staff requested additional information because the record did not show whether the permeability and prestimulation stabilized flow rates on which the determination was based reflected initial characteristics or characteristics resulting from years of sustained production.

The Commission has received no response to the January 10, 1994 tolling letter. Without additional information showing that the determination is based on initial permeability and prestimulation stabilized flow rates characteristics, we are unable to find that Oklahoma's determination is supported by substantial evidence. Under § 275.202(a) of the regulations, the Commission's may make a preliminary finding, before any determination becomes final, that the determination is not supported by substantial evidence in the record.<sup>2</sup> Therefore, the Commission hereby makes a preliminary finding that Oklahoma's determination is not supported by substantial evidence in the

<sup>1</sup> Section 271.703(c)(2) requires a jurisdictional agency's tight formation area determination to show that: (1) The estimated average *in situ* gas permeability, throughout the pay section, is expected to be 0.1 millidarcy or less; (2) the average pre-stimulation stabilized natural gas flow rate (against atmospheric pressure) of wells completed for production in the formation does not exceed the applicable maximum allowable flow rate; and (3) wells in the recommended area is expected to produce, without stimulation, more than 5 barrels of crude oil per day.

<sup>2</sup> Order No. 567, issued on July 28, 1994, rescinded Part 275 of the Commission's NGPA's regulations as of that date (68 FERC ¶ 61,135). The Commission stated, however, that rescission of Part 275 is prospective only and that timely filed applications for well determination proceedings still pending before the Commission will continue to be subject to the requirements of Part 275 as it existed before July 28, 1994.